FUEL RESOURCES DEVELOPMENT CO.

IBLA 81-1029 Decided November 29, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, holding noncompetitive oil and gas lease to have expired at the end of its term. M 16100.

Affirmed.

1. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Termination

Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or a suspension of the lease.

2. Oil and Gas Leases: Suspensions -- Oil and Gas Leases: Termination

A timely-filed application for suspension of an oil and gas lease is an appropriate vehicle for protecting the rights of a lessee where prejudice is threatened by delay in granting an application for a permit to drill a well without fault of the lessee. Although an application for suspension filed prior to lease expiration may be approved retroactively after the expiration date, the lease expires at the end of its term if no application for suspension is filed prior to the expiration date.

APPEARANCES: Fletcher Thomas, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Fuel Resources Development Company has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated August 5, 1981, holding noncompetitive oil and gas lease, M 16100, to have expired at the end of its term on August 31, 1980. BLM based its decision on the absence of drilling operations on the leased lands over the expiration date of the lease which would subject the lease to extension. 30 U.S.C. § 226(e) (1976).

Lease M 16100 is a noncompetitive oil and gas lease embracing all of secs. 32, 33, 34, and 35 in T. 24 N., R. 19 E., Montana principal meridian, Blaine County, Montana, containing approximately 2,560 acres. The lease was issued effective September 1, 1970, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), for a term of 10 years and so long thereafter "as oil or gas is produced in paying quantities." Appellant obtained record title to M 16100 by means of an assignment which became effective December 1, 1973.

On May 2, 1980, Geological Survey (Survey) received from appellant an Application for Permit to Drill (APD), dated April 29, 1980. Appellant sought permission to drill a well identified as No. I-34-24-19-N in the Leroy Field on land embraced in lease M 16100. The APD was approved by Survey on August 11, 1980, and returned to appellant thereafter.

Responding to the approval of its APD, appellant stated in an August 20, 1980, letter to Survey: "[A] quick check on rig availability indicates there is nothing available and so we will lose our lease because of non-performance. It is our understanding that a suspense [sic] of operations cannot be granted upon such short notice." Appellant did not attempt to commence drilling prior to the expiration date of the lease nor was an application for suspension of operations filed.

In the statement of reasons for appeal, appellant argues that BLM should be estopped from holding the lease to have expired at the end of its term. Appellant notes that Survey was initially advised by letter of February 8, 1980, of appellant's proposal to drill several wells including a well on the NE 1/4 SE 1/4 of sec. 34, T. 24 N., R. 19 E. Appellant received a copy of a Survey memorandum of March 5, 1980, indicating that staking of the drill site had been approved and that the prospect for approval of an APD was good, subject to stipulations regarding reclamation of the site. However, not satisfied that the memorandum was sufficient approval to warrant ordering a drilling rig, arrangements were made by appellant for a field inspection of the proposed drill site by officials from Survey on June 10, 1980. Appellant contends that at that time Survey officials were unwilling to consent to the permit because the lease was within an area under wilderness review. Appellant points out that it did not become aware that the APD was granted until

August 15, 1980, by which time the lack of available rigs precluded appellant from commencing drilling operations prior to expiration of the lease. Appellant contends that Survey and BLM were kept well advised of the urgency of action in light of the August 31, 1980, lease expiration date.

[1] The applicable statute provides that a noncompetitive oil and gas lease has a primary term of 10 years and shall continue so long after its primary term as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (1976). The statute further provides that any lease issued under this section for land on which, or for which under an approved communitization or unit agreement, actual drilling operations were commenced prior to the end of the primary term and are being prosecuted at that time shall be extended for 2 years. See Energy Trading, Inc., 50 IBLA 9 (1980). A lease which might otherwise terminate can be extended by suspension. 30 U.S.C. § 226(f) (1976). The Secretary is authorized by statute to suspend oil and gas leases. 30 U.S.C. § 209 (1976). However, no suspension of an oil and gas lease will be granted in the absence of a well capable of production, "except where the Director, Geological Survey, directs or assents to a suspension in the interest of conservation." 43 CFR 3103.3-8(a). 1/

[2] The Department may suspend an oil and gas lease in the interest of conservation where action cannot be taken on an APD prior to lease expiration because of the time necessary to comply with the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 (1976). Jones-O'Brien, Inc., 85 I.D. 89 (1978). Accordingly, a timely-filed application for suspension is a vehicle for protecting the rights of a lessee where prejudice is threatened by a delay in granting an APD without fault of the lessee.

It is well settled that in the absence of a written application for suspension properly filed prior to the expiration date of the lease, the lease terminates. Teton Energy Co., 61 IBLA 47 (1981); Coseka Resources (U.S.A.) Ltd., 56 IBLA 19 (1981); Coronado Oil Co., 52 IBLA 308 (1981). However, an oil and gas lease may be retroactively suspended where the expiration date has passed if a suspension application is properly filed before the lease terminates. Jones-O'Brien, Inc., supra. The distinction has been explained as follows: "An application filed before the lease expires, can be viewed as preserving the right of the Department to act on the application. If a suspension application is not filed prior to the lease expiration, the lease ends totally and there is nothing in existence for the Department to suspend." Jones-O'Brien, Inc., supra at 94-95 (citation omitted). Appellant failed to submit an application for suspension prior to the expiration date of the lease.

1/ Prior to the Mar. 21, 1980, amendment of 43 CFR 3103.3-8(a) (45 FR 18375) authorizing the Director, Survey, to suspend a lease on which there is no well capable of production, such action could only be taken by Departmental officers at the Secretarial level. See American Resources Management Corp., 40 IBLA 195, 198 (1979).

Although appellant argues that the delay in Survey's decision prevented it from obtaining drilling equipment in sufficient time to commence drilling operations prior to the expiration date of the lease, the inescapable fact is that appellant failed to file an application for suspension. Appellant argues that in discussing the advisability of applying for a suspension of the lease with Montana BLM personnel, appellant's employee, Donald Simpson, was informed that the policy of the Department of the Interior was not to grant suspensions where oil and gas lease acreage was being reviewed for wilderness designation. Appellant asserts that this policy is confirmed in U.S. Department of the Interior, Bureau of Land Management, Interim Management Policy and Guidelines for Land Under Wilderness Review, 44 FR 72013 (Dec. 12, 1979) (hereinafter cited as Interim Management Policy).

Assuming, arguendo, that the facts are as appellant states, reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of this Department cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c). In this case, although BLM personnel were alleged to have ventured the opinion that no suspension would be granted for a lease on lands under wilderness review, it was Survey and not BLM which had the responsibility for making the decision on an application for suspension (as well as on granting an APD). See note 1 supra. Further, appellant has misread the Interim Management Policy. It not only fails to support appellant's contention, but indicates that an application for suspension is appropriate and that the "Secretary has established a policy of assenting to a suspension of operation" where an application for an otherwise acceptable plan of operations is denied for wilderness considerations. Interim Management Policy, supra at 25, 44 FR 72029.

Further, the representation alleged by appellant appears to be inconsistent with both Rocky Mountain Oil and Gas Association v. Andrus, 500 F. Supp. 1338 (D. Wyo. 1980), appeal docketed, No. 81-1040 (10th Cir. Jan. 5, 1981), and the Departmental position. Solicitor's Opinion, 88 I.D. 909, 913 (1981). Although a more limited position regarding lessee's right to drill within wilderness review areas was taken by the Department at an earlier time, see Solicitor's Opinion, 86 I.D. 89, 115 (1979), this does not mean that a suspension application would have been denied on the facts at hand, especially in light of the approval of appellant's APD. In any event, an adverse decision on a timely filed application for suspension would have been subject to appeal. The time between granting of the APD and lease expiration may not have been sufficient to obtain a rig to commence drilling operations, but it surely was sufficient to allow the filing of an application for suspension. Appellant's reliance on the alleged representation that no suspension would be granted where the lands were under wilderness review was unreasonable, especially in light of the recently granted APD, and no estoppel can be predicated thereon.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge